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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,285	08/28/2003	Joseph R. Zelinski	1063	6688

7590 04/13/2006

Donald J. Ersler  
725 Garvens Avenue  
Brookfield, WI 53005

EXAMINER
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SAN MARTIN, EDGARDO

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/650,285

<b>Applicant(s)</b>
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ZELINSKI, JOSEPH R.

**Examiner**

**Edgardo San Martin**

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2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 30-42 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-19, 21, 30-39, 41 and 42 is/are rejected.
- 7) ☒ Claim(s) 10, 20 and 40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Double Patenting***

1. Applicant is advised that should claim 30 be found allowable, claim 42 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 – 9, 11, 30 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malkiewicz (US 3,724,591) in view of Herold (US 5,949,035).

With respect to claims 1, 2, 30 and 42, Malkiewicz teach a method of forming a muffler with a baffle (Figs.1 – 4), comprising the steps of providing a single piece of material (Fig.3); forming a baffle portion (Fig.3, Item 27), wrapping a remaining portion of the single piece of material around the baffle portion (Figs.1 and 2), attaching the single piece of material to itself (Fig.4, Item 93) to form a container portion; forming at least one inlet (Fig.1, Item 15) and at least one outlet (Fig.1, Item 17) in the container

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portion; securing the baffle portion to the container portion; and covering each end of the container portion by attaching end caps (Fig.1, Items 13), and further comprising the step of providing the container portion with one of a round and a square cross section (Figs.1 – 4; Col.1, Line 39 Col.3, Line 50). However, Malkiewicz fails to disclose the baffle portion having at least two legs, adjacent legs of the at least two legs being oriented at an acute angle to each other out of the single piece of material.

On the other hand, Herold teaches a muffler comprising a baffle portion (Figs. 1 and 2, Item 18) having at least two legs (Fig.2, Items 18, 20 and 22), adjacent legs of the at least two legs being oriented at an acute angle to each other (Fig.2) out of the single piece of material (Fig.1)(Col.5, Lines 34 – 56).

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Herold baffle portion configuration with the Malkiewicz design because it would provide with a baffle portion that would provide a multiplicity of resonating chamber that could be tuned to attenuate different noise frequencies, improving the efficiency of the muffler by providing a wider range of frequencies to be attenuate by the muffler.

With respect to claims 3 and 4, Herold teaches forming at least one first exhaust opening (Fig.2, Item 166) through a first leg (Fig.2, Item 18) and forming at least one second exhaust opening (Fig.2, item 170) through a second leg of the baffle (Fig.2, Item 20), and further comprising the step of forming at least one third exhaust opening (Fig.2, Item 168) through a third leg of the baffle (Fig.2, Item 22)(Col.9, Lines 4 – 7).

With respect to claim 5, the Examiner considers that it would have been an obvious matter of design choice to form at least one fourth exhaust opening through a third or fourth leg of the baffle, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

With respect to claim 6, Malkiewicz teaches further comprising the step of forming least one inlet opening (Fig.1, Item 15) through the container, attaching at least one inlet tube (Fig.1, Item 16) to the at least one inlet opening, forming at least one outlet opening (Fig.1, Item 17) through the container, attaching at least one outlet tube (Fig.1, Item 18) to the at least one outlet opening.

With respect to claims 7 and 8, Malkiewicz teaches inserting the at least one inlet tube (Fig.1, Item 16) through the baffle portion and inserting the at least one outlet tube (Fig.1, item 18) through the baffle portion, or inserting the at least one inlet tube partially through the baffle portion and inserting the at least one outlet tube through the baffle (Fig.1)(Col.2, Lines 45 – 56).

With respect to claim 9, the Examiner considers that it is well known in the art of acoustics in muffler applications to insert at least one baffle tube through at least two of the at least two legs and inserting at least one resonator tube in at least one of the at least two legs, in order to tune the muffler to attenuate a certain frequency range. The Examiner considers that any person with ordinary skill in the art would acknowledge that in a muffler with plural chambers and passages, a way of tuning the muffler is by altering the manner in which the chambers communicate with each other; these is a

mere design choice to comply with a particular design parameter, this limitation would not depart from the scope of Malkiewicz and Herold teachings.

With respect to claim 11, Herold teaches further comprising the step of forming a web area (Fig.2, Items 138 and 140; Col.8, Lines 34 – 36) between adjacent legs of the at least two legs.

3. Claims 12 – 19, 21, 31 – 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malkiewicz (US 3,724,591) in view of Herold (US 5,949,035), and further in view of Musitano et al. (US 4,133,479).

With respect to claims 12, 31 and 32, Malkiewicz and Herold teach the limitations discussed in a previous rejection, but fail to disclose wherein an inlet axis of the at least one inlet having an angular relationship to an outlet axis of the at least one outlet.

Nevertheless, Musitano et al. teach a muffler comprising at least one inlet (Fig.5, Item 36) and at least one outlet (Fig.5, item 23) wherein an inlet axis of the at least one inlet having an angular relationship to an outlet axis of the at least one outlet (Fig.5).

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Musitano et al. inlet-outlet axis angular relationship with the Malkiewicz and Herold design because the examiner considers that it would have been an obvious matter of design choice, in order to comply with design's space constraints, in addition, it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

With respect to claims 13, 14, 33 and 34, Herold teaches forming at least one first exhaust opening (Fig.2, Item 166) through a first leg (Fig.2, Item 18) and forming at

least one second exhaust opening (Fig.2, item 170) through a second leg of the baffle (Fig.2, Item 20), and further comprising the step of forming at least one third exhaust opening (Fig.2, Item 168) through a third leg of the baffle (Fig.2, Item 22)(Col.9, Lines 4 – 7).

With respect to claims 15 and 35, the Examiner considers that it would have been an obvious matter of design choice to form at least one fourth exhaust opening through a third or fourth leg of the baffle, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

With respect to claims 16 and 36, Malkiewicz teaches further comprising the step of forming least one inlet opening (Fig.1, Item 15) through the container, attaching at least one inlet tube (Fig.1, Item 16) to the at least one inlet opening, forming at least one outlet opening (Fig.1, Item 17) through the container, attaching at least one outlet tube (Fig.1, Item 18) to the at least one outlet opening.

With respect to claims 17, 18, 37 and 38, Malkiewicz teaches inserting the at least one inlet tube (Fig.1, Item 16) through the baffle portion and inserting the at least one outlet tube (Fig.1, item 18) through the baffle portion, or inserting the at least one inlet tube partially through the baffle portion and inserting the at least one outlet tube through the baffle (Fig.1)(Col.2, Lines 45 – 56).

With respect to claims 19 and 39, the Examiner considers that it is well known in the art of acoustics in muffler applications to insert at least one baffle tube through at least two of the at least two legs and inserting at least one resonator tube in at least one



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of the at least two legs, in order to tune the muffler to attenuate a certain frequency range. The Examiner considers that any person with ordinary skill in the art would acknowledge that in a muffler with plural chambers and passages, a way of tuning the muffler is by altering the manner in which the chambers communicate with each other; these is a mere design choice to comply with a particular design parameter, this limitation would not depart from the scope of Malkiewicz and Herold teachings.

With respect to claims 21 and 41, Herold teaches further comprising the step of forming a web area (Fig.2, Items 138 and 140; Col.8, Lines 34 – 36) between adjacent legs of the at least two legs.

#### ***Allowable Subject Matter***

4. Claims 10, 20 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The Examiner considers that the obvious combination of the patents to Malkiewicz, Herold and Musitano et al. teach the limitations described in the claims, as discussed above.



***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Contact Information***


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (571) 272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Bradley can be reached on (571) 272-2800 ext.33. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Edgardo San Martín  
Primary Examiner  
Art Unit 2837  
Class 181  
April 10, 2006